

**STATE OF MICHIGAN**  
**DEPARTMENT OF LABOR & ECONOMIC GROWTH**  
**OFFICE OF FINANCIAL AND INSURANCE SERVICES**  
**Before the Commissioner of Financial and Insurance Services**

In the matter of

XXXXX

Petitioner

File No. 86386-001

v

Great Lakes Health Plan  
Respondent

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Issued and entered  
This 19<sup>th</sup> day of February 2008  
by Ken Ross  
Acting Commissioner

**ORDER**

**I**  
**BACKGROUND**

On November 20, 2007, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Services under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* On November 29, 2007, after a preliminary review of the material submitted, the Commissioner accepted the request for external review.

The case involves medical issues. Therefore, the Commissioner assigned the matter to an independent review organization (IRO) and requested the opinions of two medical experts. On December 13, 2007, the IRO completed its review and sent recommendations to the Office of Financial and Insurance Services.

**II**  
**FACTUAL BACKGROUND**

The Great Lakes Health Plan (GLHP) certificate of coverage (Certificate) provides coverage for the Petitioner's health benefits. She sought approval from GLHP for weight

reduction surgery. GLHP denied the request, saying the Petitioner did not meet its guidelines for the procedure.

The Petitioner exhausted GLHP's internal grievance process and received a final adverse determination letter dated October 30, 2007.

## **II ISSUE**

Did GLHP properly deny the Petitioner's request for coverage for bariatric surgery?

## **III ANALYSIS**

### **Petitioner's Argument**

The Petitioner is 5'5" tall, weighs 358 pounds and has a body mass index (BMI) of approximately 60, a very high level of obesity. She says she has struggled with obesity for over thirty years. Her obesity has caused many adverse symptoms including severe obstructive sleep apnea, arthritis of the weight bearing joints, diabetes, and hypertension. She takes multiple medications for these conditions yet they are still uncontrolled. Due to the pain of arthritis in her knees she says she is almost wheelchair bound.

Petitioner says that in early 2003, after injuring her left knee at work she gained 80 pounds. In 2005, she injured the right knee and gained another 60 pounds. She says due to these injuries it is very difficult for her to exercise. She can hardly walk from room to room without falling or experiencing shortness of breath. She has failed numerous diets (no starch, Slim Fast, South Beach and Atkins) and pharmacotherapy (prescription diet pills, Dexatrim and Metformin) that were supervised by her physician, Dr. XXXXX. For exercise she has used an exercise bike, treadmill, skateboard, walking, swimming, and aerobics. Her weight loss attempts have achieved few or no lasting results.

Her physicians support her request for bariatric surgery:

[Petitioner] has been my patient from 1995. She has a history of morbid obesity, hypertension, arthritis and diabetes. Patient's weight is 358 lbs., height 5'5" with BMI of 60. Patient is on multiple medications for her condition which is still uncontrolled. On several occasions for the past 10 years, patient tried all methods of dieting, including appetite suppressants, exercise, and low fat/carb diet but we were unsuccessful in controlling her weight.

For the above reasons, I strongly recommend that she would benefit from this procedure due to her underlying medical conditions.

-- XXXXX MD, primary care physician

This individual has been obese and struggling with her weight for the past 30 years. She has participated in numerous supervised and non-supervised weight loss programs and has made multiple, credible attempts to achieve lasting weight loss.

\* \* \*

NIH statistics demonstrate that 98% of patients who lose through conventional methods quickly regain their weight loss plus more. The national Institutes of Health Consensus Statement has determined that surgical intervention is a viable treatment for the control and management of morbid obesity and is medically necessary for patients at least 100 pounds over their ideal weight with prominent comorbidities.

Her co-morbid medical problems include:

- Diabetes
- Numbness or tingling of the feet or hands
- Anemia Heartburn
- Sleep Apnea
- Shortness of Breath upon Exertion
- Arthritis
- Pain in Weight Bearing Joints
- Obesity

\* \* \*

Based on the above clinical historical information, it is my professional opinion that this individual is an excellent candidate for the Roux-en-Y Gastric Bypass Procedure. I anticipate that this surgery in conjunction with our comprehensive multi-disciplinary program which includes internal medicine, pulmonary and cardiology support as needed, dietary and psychological counseling and ongoing support group meetings will contribute to significant weight loss with result reversal and improvement in her co-morbidities.

-- Dr. XXXXX, surgeon

The Petitioner and her physicians argue that bariatric surgery is necessary because it would help preserve and improve her health. They believe she meets GLHP's criteria for the

surgical treatment of obesity and argues that GLHP should cover the surgery because it is medically necessary.

#### Respondent's Argument

In its final adverse determination issued to Petitioner, Respondent stated:

Great Lakes Health Plan did not approve your request due to not meeting the MAHP Bariatric Surgery Guidelines for coverage, specifically Criteria #5. Application has no documented compliance with a weight-loss program that includes diet, exercise, and behavior modification for a minimum of one year. The program must utilize a multidisciplinary approach including involvement of a physician with a special interest in obesity, a dietician, and a social worker/psychologist/psychiatrist interested in behavior modification and eating disorders.

GLHP believes its denial was appropriate.

#### Commissioner's Analysis

The threshold requirement for approval of bariatric surgery is that the procedure be medically necessary. Bariatric surgery is not a covered benefit under the GLHP Certificate unless certain conditions are met which establish that the surgery is medically necessary. Those conditions are described on page 45 of the Certificate, which includes this provision:

##### Article IX: COVERED SERVICES

9.1 A Member is entitled to the service, equipment and supplies specified in Section 9.2 when they are:

- a. Medically necessary;
- b. Performed, prescribed, directed, or arranged in advance by the Member's Participating Primary Care Provider, the network physician who is responsible for the provision, or arrangement for the provision, of health services to the Member.
- c. When required, authorized in advance by GLHP; and
- d. Consistent with GLHP's obligations to provide such services pursuant to the Medicaid Agreement.

9.2 The following are covered when they meet the requirements stated above in Section 9.1:

\* \* \*

- u. Bariatric surgery is a Covered Service only when Medically Necessary, authorized in advance by GLHP

and the request for such a service satisfies the Bariatric Surgery Guidelines adopted by the Health Plans Division of the Michigan Office of Financial and Insurance Services.

To help resolve this issue, the Commissioner sought review by an IRO on the question of the medical necessity of the requested surgery. Reviews were performed by two physicians with experience in the medical management of patients with Petitioner's condition.

The first IRO reviewer is a surgeon certified by the American Board of General Surgery.

This reviewer's report includes the following observations and conclusions:

According to her attending physician's letters, she has tried multiple proprietary weight-loss programs. She has not been a candidate for most pharmacologic interventions because of her difficulty to control hypertension. Over the past year she has been under a tremendously closely supervised physician inspired exercise and diet program which has resulted in a net loss of approximately four (4) pounds, about 1 percent of her body weight. There are detailed diet histories, journals, diaries, physician notes, and explanatory letters accompanying this. She has seen, this reviewer believes to be, a psychologist who found her to be a suitable candidate for surgery and no contraindications to following an educational program. She did not, as best as this reviewer can determine, attempt behavioral modification.

The reviewer concluded that medical necessity had been established for bariatric surgery.

The second IRO reviewer, a practicing physician certified in internal medicine, reached a different conclusion. This reviewer concluded that medical necessity for the requested bariatric surgery had not been established. The reviewer's report includes the following analysis:

The Great Lakes Health Plan (GLHP) Weight Loss Surgery Member Program rules are consistent with the [National Institutes of Health] Guidelines. . . . They are more specific in their expectations regarding what qualifies as attempts at "nonsurgical weight loss." The NIH does not give specifics regarding what this entails, but GLHP provides specific requirements that must be met and documented in order to be approved for the surgery. These requirements include compliance with a medically supervised weight loss program and utilization of a multidisciplinary approach including dietician, psychiatrist/psychologist, physician, and social worker. This requirement is reasonable and certainly attainable, and the health plan can provide each of these services to fulfill the requirement.

The enrollee meets the criteria for the surgery as required by GLHP, with the exception of the appropriate documentation of the weight loss program. It is understandable that [Petitioner] believes that she has done this, as she provides a dietary diary, explanations for her inability to exercise, and office visits with her primary doctor. However, the documentation falls short of the requirements. For example, regarding the documentation of the dietary attempts at weight loss, her diary simply states the name of the food that was consumed for that meal, but does not mention portion size, how it was prepared, calories, or nutritional information. There is also no documentation for a regularly followed nutritionist, which was another requirement of the plan.

As noted in section 9.2 of the Certificate (quoted above), an individual requesting bariatric surgery must meet the “guidelines adopted by the Health Plans Division of the Michigan Office of Financial and Insurance Services.” These guidelines are in a document titled “MAHP Bariatric Surgery Guidelines for Coverage” which was drafted by the Michigan Association of Health Plans (MAHP). The MAHP is an association of Michigan HMOs that, among other activities, prepares guidelines for coverage of particular medical procedures. Respondent is a member of the MAHP. The bariatric surgery guidelines were reviewed and accepted by the Health Plans Division of the Office of Financial and Insurance Services in February 2006 and subsequently adopted by the MAHP for use by all its member HMOs. These guidelines permit an HMO to require participation in a supervised weight loss program for up to one year as a prerequisite to bariatric surgery. Petitioner has not yet completed such a program and, for that reason, Respondent’s denial of authorization for bariatric surgery is upheld.

However, the Commissioner also finds that GLHP has not met the requirements the MAHP policy imposes on HMOs for bariatric surgery guidelines. GLHP’s own bariatric guidelines are neither included, nor referred to, in its certificate of coverage. Instead, they are in a separate GLHP document titled “Weight Loss Surgery Program Advance Notice.” This document describes in detail the weight loss program that is required to meet GLHP’s criteria for

bariatric surgery. There is no indication in the record that this document is routinely provided to GLHP members or that it was ever provided to Petitioner.

The Great Lakes Member Handbook, which apparently was provided to Petitioner, does describe the benefits available for weight reduction. The Handbook states, “Your [primary care physician] will help set up services for weight reduction up to and including Bariatric Surgery when medically necessary and approved by GLHP.” (Handbook, page 20)

The MAHP bariatric guidelines require that an HMO weight loss program

must be medically supervised and provided by a plan provider and available and accessible to members. Members will be covered for all medical services but not for food supplements. All medical services related to the program including laboratory, EKGs, physician office visits, psychological testing will be covered with applicable co-payments and/or deductibles required under the certificate. . . . Plans should have pre and post surgical support both available and accessible with coverage clearly stated to its members.

This is a requirement directed at the HMO as well as the member – the HMO must establish this program and make it available to its members. In this instance, Respondent has failed to do that. It has merely made an after-the-fact assessment of Petitioner’s own individual efforts to lose weight and has found them to be insufficient. It is not clear whether GLHP provided Petitioner’s physician with any information about its bariatric surgery requirements. No material submitted by GLHP shows any effort to make its pre-bariatric weight loss program known to Petitioner or her doctor.

Given Respondent’s failure to provide Petitioner with the required assistance, the Commissioner requires Respondent to initiate contact with Petitioner, directly or through her primary care physician, and provide the information and materials needed for Petitioner to enroll in a weight loss program that meets the requirements of the MAHP guidelines.

**IV  
ORDER**

GLHP's October 30, 2007, final adverse determination is upheld. However, GLHP is required to enroll Petitioner in a weight loss program which meets the criteria of the MAHP guidelines. GLHP shall enroll Petitioner within 60 days and provide the Commissioner proof it has implemented this order no later than seven days from the date of enrollment.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the Circuit Court for the county where the covered person resides or in the Circuit Court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Services, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.